

Indiana Department of Education

Division of Special Education

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER: 1792.01  
 COMPLAINT INVESTIGATOR: Sandie Scudder/Steve Starbuck  
 DATE OF COMPLAINT: August 27, 2001  
 DATE OF REPORT: October 5, 2001  
 REQUEST FOR RECONSIDERATION: yes/revised October 31, 2001  
 DATE OF CLOSURE: November 14, 2001

**COMPLAINT ISSUES:**

Whether the Elwood Community School Corporation and the Anderson Community Special Education Cooperative violated:

- 511 IAC 7-27-3(a)(3) with regard to the school's alleged failure to include in the case conference committee (CCC) meeting one of the student's general education teachers.
- 511 IAC 7-17-72 with regard to the school's alleged failure to designate a single special education teacher, licensed in the area of the student's disability, as the student's teacher of record.
- 511 IAC 7-27-6(a)(1) with regard to the school's alleged failure to include in the student's individualized education program (IEP) a statement of the student's present level of performance, including how the student's disability affects the student's involvement and progress in the general education curriculum.
- 511 IAC 7-27-4(c)(1) with regard to the school's alleged failure to ensure the CCC, in developing the student's IEP, considered the strengths of the student and the concerns of the parent for enhancing the education of the student.
- 511 IAC 7-27-4(c)(3) with regard to the school's alleged failure to ensure the CCC, in developing the student's IEP, considered strategies, including positive behavioral intervention and supports, to address the student's behavior that impedes the student's learning or the learning of others.
- 511 IAC 7-27-5(a)(7) with regard to the school's alleged failure to include, as part of the written CCC report, the written opinion of the student.
- 511 IAC 7-27-6(a)(10) and 511 IAC 7-27-9(d) with regard to the school's alleged failure to identify in the student's IEP the least restrictive environment from the continuum of placement options made available by the school.
- 511 IAC 7-17-8 with regard to the school's alleged failure to ensure that the behavioral intervention plan (BIP) included as part of the student's IEP, describes how the student's environment will be altered, identifies positive behavioral intervention strategies, and specifies which skills will be taught in an effort to change a specific pattern of behavior of the student.
- 511 IAC 7-27-6(a)(7) with regard to the school's alleged failure to include in the student's IEP a statement of how the student's progress toward annual goals and objectives will be measured and how the student's parent will be regularly informed of the progress.
- 511 IAC 7-27-6(a)(4) with regard to the school's alleged failure to include in the student's IEP a statement regarding the student's participation in statewide or local assessments, including appropriate accommodations in testing materials and procedures the student may need to

- participate in such assessments.
- 511 IAC 7-27-6(a)(8) with regard to the school's alleged failure to include in the student's IEP a statement of the student's need for extended school year services.
- 511 IAC 7-27-6(a)(3) with regard to the school's alleged failure to include in the student's IEP a statement of the special education and related services and supplementary aids and services to be provided to the student, including a statement of program modifications to be provided.
- 511 IAC 7-27-6(a)(2) with regard to the school's alleged failure to include in the student's IEP a statement of measurable annual goals, including benchmarks or short-term objectives.
- 511 IAC 7-27-9(a)(4) with regard to the school's alleged failure to ensure the CCC determined the student's placement subsequent to developing the student's IEP.
- 511 IAC 7-18-2(a) with regard to the school's alleged failure to provide a free appropriate public education to a student with a disability at least three years of age and less than 22 years of age.

An on-site review was conducted on September 14, 2001.

Due to the number of issues, the deadline for completion of this report was extended from September 26 to October 5, 2001.

## FINDINGS OF FACT:

1. The Student is 14 years old, is in 8<sup>th</sup> grade, and is eligible for special education and related services as a student with a learning disability. The Complainant unilaterally withdrew the Student from school on February 9, 2001. The Student was home schooled for the remainder of the 2000-2001 school year.
2. A CCC was convened on February 8, 2001, but the Complainant left prior to the end of the meeting. Prior to leaving the Complainant commented that a Behavioral Intervention Plan (BIP) should be developed for the Student and submitted to the Complainant for review. The Complainant unilaterally withdrew the Student from school the following day, eliminating the need for a BIP for the Student's behavior in school.
3. The CCC convened on May 30, 2001, to develop the Student's IEP for the 2001-2002 school year and the Student's return to public school. The proposed IEP states the Student will participate in general education for most of the instructional day. The general education teacher arrived 30 minutes late for this CCC due to a field trip. However, the teacher was present for the duration of the CCC meeting. Components of the Student's IEP were discussed by the CCC, but a final IEP did not result from this meeting. A proposed IEP was mailed to the complainant for his review on June 12, 2001.
4. Page five of the proposed IEP dated May 30, 2001, lists two TORs. One TOR is listed for the disability category of learning disabled, and one TOR is listed for the disability category of emotionally disabled. According to the teacher licensed to teach students with learning disabilities, she serves as the Student's TOR and carries out the TOR responsibilities.
5. The proposed IEP dated May 30, 2001, lists the Student's present levels of performance on the annual goal/objectives forms for grammar, math and reading, but does not include a statement regarding the Student's present levels of performance and how the Student's disability will affect progress in the general education curriculum. The CCC Report dated May 30, 2001, includes a

statement addressing how the Student's disabilities will affect the Student's progress in the general education curriculum.

6. The Complainant asserts that the School did not consider the strengths of the child or the concerns of the parent. Page four of the May 30, 2001, CCC Report lists reading as the Student's strength. Page two of the CCC Report dated May 30, 2001, documents the Complainant's vision and concerns regarding the Student. The discussion summary includes the Complainant's remarks about Brigance as an assessment tool for the Student, availability of materials to be used at home by the Student, and the negative input the Student receives from other students.
7. The discussion summary of the CCC Report dated May 30, 2001, addresses the Student's behavior which impedes his learning or the learning of others and included strategies, positive behavioral interventions and supports such as: behavior and homework log, social skills intervention, and counseling.
8. The Complainant requested that a letter, written by the Student, be included in the May 30, 2001, CCC Report as a written opinion. Page four of the CCC Report dated May 30, 2001, incorrectly documented that no written opinions were attached; however, the Student's written opinion was included with the CCC Report.
9. Page two of the proposed IEP indicates that three options for least restrictive environment were considered by the CCC: (1) general education curriculum for the entire instructional day with modifications; (2) general education curriculum for the entire instructional day with individualized instruction or services provided by the special education staff in the general education classroom; and (3) general education curriculum for most of the instructional day with special education instruction provided in a resource room for part of the day. Page two of the proposed IEP dated May 30, 2001, reflects that options one and two did not provide adequate support. The proposed IEP indicates that the CCC identified option three as the least restrictive environment for the Student. The audio recording of the May 30 CCC meeting contains the recommendation for special education instruction in three subject areas and a discussion of the general education courses in which the Student may participate. However, the audio recording terminates before the CCC formally adjourns. On August 21, 2001, the complainant signed the Consent for Placement form, indicating his disagreement with the proposed placement and services.
10. Goal sheets included in the proposed IEP dated May 30, 2001, specify how the Student's progress will be measured, but did not specify how the parents will be regularly informed of the Student's progress toward the goals. The Director acknowledged the IEP does not state how the parent will be informed of the students' progress toward the goals, and will address this issue as they prepare a new IEP form.
11. Page four of the proposed IEP dated May 30, 2001, includes a section titled "Participation in Standardized & District-Wide Assessment" and indicates that the Student was not in a statewide testing mandated grade level. However, the CCC Report dated May 30, 2001, documented that the Student is in 8<sup>th</sup> grade which is a mandatory grade for ISTEP, and included modifications for the Student during statewide testing.
12. The Complainant asserts that Extended School Year (ESY) services were never discussed as an option for the Student. On the IEP dated May 18, 2000, documentation reveals that ESY was "discussed, but no strong conclusion reached." The complainant participated in the May 18, 2000, CCC meeting and gave written permission on that date for the plan to be implemented as written. According to the Director, the proposed IEP dated May 30, 2001, did not address ESY since the

Student was being home schooled, and would not return to school until the fall of 2001-2002.

13. The proposed IEP dated May 30, 2001, includes twenty-six program modifications relative to the Student's general education curriculum. The Director stated that the Program Modification form was completed before the CCC meeting; however, on June 12, 2001, the school sent the complainant a copy of the notes from the May 30 CCC meeting, as well as the school's proposal for special education services, proposed placement, and proposed modifications, for the complainant's review and response.
14. The proposed IEP dated May 30, 2001, included goals and short-term objectives for the following subjects: grammar, math, and reading. The goals and short-term objectives describe what the Student is expected to accomplish within a twelve-month period. Evaluation procedures are identified for each short-term objective.
15. In preparation for the May 30, 2001, CCC meeting, the Student's previous math, grammar, and reading teachers drafted proposed goals and objectives based on the Student's needs at the time the Student was removed from school in February 2001. Based on these needs and goals, the teachers recommended continued special education instruction in each of these subjects. The least restrictive environment proposed by the school was a combination of general education instruction for the majority of the instructional day with special education services in the resource room for the other part of the instructional day. The CCC was to meet in September after achievement testing to review the May 30, 2001, IEP.

## CONCLUSIONS:

1. Fact of Finding #3 indicates that, although the CCC meeting on May 30, 2001, had begun before the general education teacher's arrival, the teacher remained for the duration of the CCC meeting and was present for the discussion of the Student's IEP. No agreed-upon IEP resulted from the May 30 CCC meeting. Therefore, no violation of 511 IAC 7-27-3(a)(3) is found.
2. Finding of Fact #4 reflects that, although the IEP dated May 30, 2001, includes the name of two teachers of record, the individual licensed in the area of the student's identified disability (learning disability) carries out the TOR responsibilities for the Student. Therefore, no violation of 511 IAC 7-17-72 is found.
3. Finding of Fact #5 indicates that a statement of the Student's present level of performance was not included in the IEP dated May 30, 2001. However, the CCC Report contained a statement relative to how the Student's behavior and learning disabilities affected the Student's progress in the general education curriculum. The CCC Report and IEP are considered as a whole; therefore, no violation of 511 IAC 7-27-6(a)(1) is found.
4. Finding of Fact #6 indicates that the CCC Report and accompanying discussion notes dated May 30, 2001, documented the strengths of the Student and that the concerns of the parents were considered during the CCC meeting on May 30, 2001. A violation of 511 IAC 7-27-4(c)(1) did not occur.
5. Finding of Fact #7 reflects that on May 30, 2001, the CCC addressed the Student's behavior that impedes the Student's learning or the learning of others and discussed various positive behavioral strategies. The CCC's consideration was included in the CCC Report/IEP. Therefore, no violation of 511 IAC 7-27-4(c)(3) occurred.

6. Finding of Fact #8 demonstrates that, although the CCC incorrectly noted on the CCC Report dated May 30, 2001, that no written opinion was attached to the CCC Report, the CCC did attach the Student's written opinion to the CCC Report dated May 30, 2001. Therefore, no violation of 511 IAC 7-27-5(a)(7) is found.
7. Finding of Fact #9 indicates that on May 30, 2001, the CCC considered the Student's need for special education instruction, as well as instruction in general education classes in determining placement in the least restrictive environment. Page two of the IEP dated May 30, 2001, documented that the CCC proposed the general education curriculum for most of the instructional day, with special education instruction provided in the resource room. Therefore, no violations of 511 IAC 7B27-6(a)(10) and 511 IAC 7-27-9(d) occurred.
8. Findings of Fact #2 and #7 indicate that, upon leaving the CCC meeting on February 8, 2001, the Complainant requested a BIP be developed by the CCC for his review. After the Complainant unilaterally withdrew the Student from school on February 9, 2001, the CCC did not address the issue of a BIP. The Student did not return to school until the 2001-2002 school year. The CCC Report dated May 30, 2001, indicates that positive behavioral strategies were discussed. Therefore, a violation of 511 IAC 7-17-8 did not occur.
9. Finding of Fact #10 reflects that the IEP dated May 30, 2001, does not state how the parents will be regularly informed of the Student's progress toward the goals included in the IEP. Although the Director states that a new IEP form is being drafted and will address how parents will be notified of the Student's progress, the lack of such statement on the May 30 IEP results in a violation of 511 IAC 7-27-6(a)(7).
10. Finding of Fact #11 indicates that the IEP dated May 30, 2001, included a section regarding standardized testing and district-wide assessment that was incorrectly completed. However, the CCC Report dated May 30, 2001, explained that the Student was in a mandated testing grade level; and testing modifications to be provided to the Student during ISTEP were identified. Therefore, no violation of 511 IAC 7-27-6(a)(4) occurred.
11. Finding of Fact #12 indicates that ESY services were discussed at the May 18, 2000, CCC meeting, but no decision was reached. ESY services were not discussed at the May 30, 2001, CCC meeting, as the Student was being home schooled. The Student's status as a home-schooled student does not eliminate the need for discussion of ESY services, as the School is obligated to make some special education services available to students enrolled in private school, including those students being home schooled. Therefore, a violation of 511 IAC 7-27-6(a)(8) is found.
12. Finding of Fact #13 establishes that the proposed IEP dated May 30, 2001, included twenty-six modifications to be utilized in the Student's general education curriculum. The proposed modifications were sent to the parent for consideration, along with the report of the CCC meeting and proposed IEP. Therefore, a violation 511 IAC 7-27-6(a)(3) did not occur.
13. Finding of Fact #14 indicates that the IEP dated May 30, 2001, includes measurable annual goals, including benchmarks or short-term objectives. Procedures to evaluate each short-term objective are listed. Therefore, no violation of 511 IAC 7-27-6(a)(2) occurred.
14. Finding of Fact #15 demonstrates that the proposed LRE for the Student was determined by the needs of the Student at the time of the Student's withdrawal and that the CCC planned to convene after fall testing to discuss the IEP. Therefore, a violation of 511 IAC 7-27-9(a)(4) did not occur.

15. Findings of Fact #2 through #15 reflect that, except for the CCC's failure to include a statement in the IEP of how the parent will be informed of the Student's progress and failure to address the Student's need for ESY services, the School has complied with the identified requirements of 511 IAC Article 7. The two substantiated procedural violations do not constitute a denial of a free appropriate public education to the Student. Therefore, no violation of 511 IAC 7-18-2(a) occurred.

**The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

**CORRECTIVE ACTION:**

The Elwood Community School Corporation and the Anderson Community Special Education Cooperative shall:

1. Reconvene the CCC and consider the Student's need for extended school year services and include a statement in the Student's IEP identifying how the parent will be notified of the Student's progress toward the goals listed on the IEP. A copy of the CCC Report/IEP shall be submitted to the Division no later than November 2, 2001.
2. Revise the IEP document to include a section to identify how the parent will be notified of the Student's progress toward annual goals. A copy of the revised form shall be submitted to the Division no later than November 9, 2001.
3. Send a written reminder to staff who serve as the public agency representative to case conference committees that ESY services must be considered for every student and that each IEP is to include a statement of how the parent will be notified of the student's progress toward annual goals. A copy of the written reminder along with a list of staff to whom the reminder was sent shall be submitted to the Division no later than November 9, 2001.